

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 122941-001

Humana Insurance Company

Respondent

Issued and entered
this 5th day of December 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On August 19, 2011, Attorney XXXXX, on behalf of his client XXXXX (the Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

The Petitioner receives medical benefits under a policy underwritten by Humana Insurance Company (Humana). The Commissioner notified Humana of the external review and requested the information used in making its adverse determination. Humana furnished the requested information and the Commissioner accepted the case for external review on August 26, 2011.

The case involves medical issues so the Commissioner assigned the matter to an independent review organization, which completed its review and sent its recommendation to the Commissioner on September 9, 2011. (A copy of the complete report is being provided to the parties with this Order.)

II. FACTUAL BACKGROUND

The Petitioner has a condition known as a Class III malocclusion, in which his upper and lower teeth do not meet properly. A malocclusion can adversely affect the ability to chew and can cause other problems. The Petitioner's condition has been treated with orthodontics.

Petitioner's dentists have recommended surgical correction of his deformity.

Humana denied the Petitioner's request for coverage of the procedure. The Petitioner appealed the denial through Humana's internal grievance process. Humana maintained its denial and issued its final adverse determination dated June 22, 2011.

III. ISSUE

Did Humana correctly deny coverage for the proposed orthognathic surgery?

IV. ANALYSIS

Respondent's Argument

The relevant portion of Humana's June 22, 2011, final adverse determination is restated below. (The material in bold print is a quotation from the outside medical review Humana commissioned to evaluate the Petitioner's claim.)

An external independent reviewer, specializing in dentistry and oral surgery, thoroughly reviewed the following information:

- The appeal information
- Letter from Dr. XXXXX dated April 8, 2011
- Humana's Medical Coverage Policy - Orthognathic Surgery
- Humana's preauthorization information
- The Benefit Plan Document

We were unable to approve your appeal because the proposed orthognathic surgery is not covered under the plan.

The external independent reviewer stated that ***according to the American Association of Oral and Maxillofacial Surgeons (AAOMS) Parameters of Care the etiology of maxillofacial skeletal deformities may be either congenital or acquired. Deformities may be evident at birth or may manifest during subsequent growth. The medical dictionary defines congenital as follows:***

- 1: existing at or dating from birth***
- 2: acquired during development in the uterus and not through heredity***

As the condition was not present at birth, this is not a congenital condition. Examples of congenital facial conditions are a cleft lip and palate, Treacher Collins, Crouzon's and Pierre Robin's Syndrome. Therefore, the proposed Orthognathic surgery is not covered under the plan.

Petitioner's Argument

In a letter to Humana requesting coverage for the proposed surgery dated April 11, 2011,

Dr. XXXXX, oral and maxillofacial surgeon, wrote:

I am writing in regard to XXXXX who is now a 20-year-old male who was evaluated in the office on March 2, 2011 for what he described as over-growth of his lower jaw. On clinical exam, the patient has a Class III malocclusion related to mandibular horizontal overgrowth. The patient also has an anterior openbite with compromised masticatory function. The patient has undergone previous orthodontic care including a chin strap to try to slow mandibular growth. This patient does require surgical correction of this deformity for improved masticatory function. I have reviewed the patient's medical history and there are no contraindications to proceeding with surgery. . . .

In a July 5, 2011, letter to the Petitioner's father, Dr. XXXXX, one of Petitioner's dentists, wrote:

After reading through the denial, as well as your appeal, based on the definition of congenital (not hereditary) their denial probably cannot be argued. The genetic pattern for the abnormal growth process was present in uterus and, therefore, at birth. The defect itself does not manifest itself in utero or at birth. The way they word the definition makes the denial reasonable.

However, if you look at page 2 (of 10) in their own [clinical policy] on orthognathic surgery coverage, it clearly states that, "Humana members may be eligible for orthognathic surgery for maxillary and/or mandibular facial skeletal deformities associated with a significant functional impairment."

XXXXX's Class III malocclusion clearly meets the overjet and molar relationship discrepancies described on page 2 (of 10).

In addition it is my opinion, having examined XXXXX and having followed his facial development for several years, that the severity of his problem creates a significant functional problem from a speech, as well as masticatory standpoint.

Commissioner's Review

The policy provision (policy pages 41-42) governing orthognathic surgery states:

We will pay benefits for covered expenses incurred by you . . . for . . . [c]ertain oral surgical operations as follows . . . [o]rthognathic surgery for a congenital anomaly causing a functional defect.

The specific medical standards for the surgery are in Humana's Medical Coverage Policy CLPD-0341-008 entitled "Orthognathic Surgery." The document includes these eligibility standards:

Humana members **may** be eligible under the Plan for **orthognathic surgery** for **maxillary and/or mandibular facial skeletal deformities** associated with a significant functional impairment* of masticatory malocclusion, for the following indications:

- Anteroposterior discrepancies:
 - Maxillary/mandibular incisor relationship: overjet of 5 millimeters (mm) or more, or a 0 to a negative value (normal is 2 mm); **OR**
 - Maxillary/mandibular anteroposterior molar relationship discrepancy of 4 mm or more (normal is 0-1 mm); **OR**
- Vertical discrepancies:
 - Open bite with no vertical overlap of anterior teeth or unilateral or bilateral posterior open bite greater than 2 mm; **OR**
 - Deep overbite with impingement or irritation of buccal or lingual soft tissues of the opposing arch; **OR**
 - Supraeruption of a dentoalveolar segment due to lack of occlusion; **OR**
- Transverse discrepancies:
 - Total bilateral maxillary palatal cusp to mandibular fossa discrepancy of 4 mm or greater, or a unilateral discrepancy of 3 mm or greater, given the axial inclination of the posterior teeth; **OR**
- Asymmetries:
 - Anteroposterior, transverse or lateral asymmetries greater than 3 mm with concomitant occlusal asymmetry

*Functional impairment is defined as a direct and measurable reduction in physical performance of an organ or body part.

This appeal presents two issues: whether the Petitioner's condition is a congenital anomaly causing a functional defect, and, if it is, whether the condition meets the minimum standards to qualify for surgical correction.

1. Congenital Anomaly

Humana's final adverse determination addresses only the question of whether the Petitioner's condition is a congenital anomaly. Humana's outside medical reviewer indicated that, because the Petitioner's condition was not present at birth, it is not a congenital condition. Having concluded that the condition is not congenital, Humana felt no additional analysis was required in processing the complaint.

As Humana's reviewer noted, the policy does not define the terms congenital, congenital anomaly, and functional deficit. According to Humana's reviewer, a congenital condition is one that is existing at or dating from birth and acquired during development in the uterus and not through heredity. The source of this definition is not specified by the reviewer.

A standard medical reference, *Stedman's Medical Dictionary* (27th Edition), defines "congenital" as:

Existing at birth, referring to certain mental or physical traits, anomalies, malformations, diseases, etc., which may be either hereditary or due to an influence occurring during gestation up to the moment of birth.

Both definitions indicate that a congenital condition is one which exists at birth. Neither definition indicates that the condition must be apparent at birth. It is certainly true that some congenital conditions do not manifest themselves until well after birth. The Petitioner's condition is one.

The medical questions in this review were presented to an independent medical organization (IRO) for review for analysis as required by Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer assigned to this case is a practicing dentist who is board certified in oral and maxillofacial surgery and has been in practice for more than 15 years. The reviewer's report included the following analysis and conclusions:

[T]he etiology of maxillofacial skeletal deformities can be congenital in nature. ...
[D]eformities may be present at birth or may manifest during subsequent growth and development creating functional problems such as difficulty with mastication.
... [O]rthognathic surgery will result in improved musculoskeletal and dento-osseous relationships and improved mastication and swallowing for the member.
... [T]he requested surgery is necessary to correct the member's congenital maxillofacial skeletal deformity.

[T]he requested orthognathic surgery is medically necessary for correction of a congenital anomaly causing a functional deficit.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. In a final order which rejects an IRO recommendation, the Commissioner must cite "the principal reason or reasons why the commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on extensive experience, expertise, and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case. The Commissioner accepts the IRO reviewer's determination that the Petitioner's condition was congenital in nature and that correction through orthognathic surgery is medically necessary.

2. Standards for Surgery

Humana has an internal clinical policy document which provides detailed standards for coverage of orthognathic surgery.

The Petitioner's dentists have asserted that the Petitioner's condition does meet the standards established in Humana's Medical Coverage Policy CLPD-0341-008. Humana has not contradicted that assessment.

The Commissioner finds that Humana's denial of coverage for the Petitioner's orthognathic surgery is not consistent with the terms of the certificate.

V. ORDER

The Commissioner reverses Humana Insurance Company's final adverse determination of June 22, 2011. Humana shall, within 60 days of this Order, provide coverage for the proposed surgery subject to any applicable copayments and deductibles. Humana shall, within seven (7) days of providing coverage, furnish the Commissioner with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding the implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free (877) 999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner